IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 2247 OF 2005

Saquib Abdul Hamid Nachan ...Applicant

Versus

The State of Maharashtra ...Respondent

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Mr. M.H. Solkar, Advocate for Applicant

Mr. V.B. Konde Deshmukh with Mr. Y.S. Shinde, A.P.P. for State.

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CORAM: SMT. V.K. TAHILRAMANI, J.
DATED: 8TH AUGUST, 2005

P. C.:-

1. Heard both sides.

2. The applicant is seeking discharge in Sessions Case No. 268 of 2004. The said case pertains to C.R. No. 59 of 2002 of Bhiwandi Town police station. Thereafter the investigation was carried out by the DCB CID, Mumbai by registering the offence as C.R. No. 53/2003. The said case is mainly under Section 302 and 120-B of I.P.C.

3. The learned advocate for the applicant has submitted that there is no reliable material on record to show that the applicant was in any way connected with the said case and hence, the applicant deserves to be discharged.

4. It is the prosecution case that one advocate Lalit Jain was shot dead on 24.4.2002 and the applicant is one of the conspirators who is involved in the said crime. The prosecution has relied on the statement of one Ejaz Ahmed Mohd. Tahir Shaikh to show the involvement of the applicant in the crime. According to the prosecution, the present applicant alongwith wanted accused Hasib and other accused entered into a criminal conspiracy and pursuant to the said conspiracy Lalit Jain came to be murdered. Hasib had called witness Ejaz Ahmed in Hotel Rolex. At that time, the applicant was present in the hotel. In the presence of the present applicant Hasib gave Rs.22,000/- to Ezaj and asked him whether the work would surely be done. Ezaj replied that his friend Mohammed Mujammil Mohammed Yunus will do the work. At that time, the applicant stated that Adv. Lalit Jain was against Muslim religion and was also against cow-slaughter, hence it was necessary to murder him. At that time, the present applicant also stated that he will arrange for required money and articles. Thereafter, the co-accused was given cash and also supplied with weapons. The deceased advocate Lalit Jain was also shown to the co-accused. On 24.4.2002 the wanted accused fired gun shot at advocate Lalit Jain and thus advocate Lalit Jain came to be murdered.

5. All the facts reproduced above, have been stated by witness Ejaz Ahmed in his statement dated 20.6.2003. The statement of Ejaz Ahmed receives corroboration from the statement of Mohd. Mujammil Mohd. Yunus Ansari and Akbar Iquabal Diwakar. From the material on record, especially the statement of Ejaz Ahmed, it is clear that the applicant was present when the talks in relation to murder of advocate Lalit Jain were going on. The statement of Ezaj Ahmed clearly shows that the applicant participated in the talks and also expressed that advocate Lalit Jain should be killed. Moreover, the applicant had shown his willingness to provide money and articles to complete the job. It is not as if the applicant was only present during the meeting but from the statement of witness Ejaz it is clear that he participated in the discussion and expressed that advocate Lalit Jain should be killed and the applicant also showed his willingness to provide money and articles to complete the job. This clearly shows that the applicant was a member of the conspiracy which was hatched to murder advocate Lalit Jain. As far as criminal conspiracy is concerned, when two or more persons agree to do an illegal act, the offence is said to be committed and nothing further needs to be done by the accused. Just the agreement itself would make the accused persons liable to be punished for criminal conspiracy.

6. The Supreme Court has observed in the case of **Suresh Chandra Bahri Vs. State of Bihar reported in (1995) Supp. (1) SCC 80** that where the agreement is for accomplishment of an act which by itself constitutes an offence, no overt act is necessary to be proved by the prosecution. Mere agreement between the accused for commission of crime is sufficient. It is also observed in the said case that conspiracy can be proved by circumstantial evidence from which the inference of an agreement to commit an offence may be legitimately drawn. From the statement of Ejaz Ahmed and other material on record it can certainly be inferred that the present applicant and other accused had participated in a conspiracy to murder Advocate Lalit Jain.

7. In the case of **Kehar Singh Vs. State (Delhi Administration) (1988) 3 SCC 609,** the Supreme court has observed that the express agreement, need not be proved, nor actual meeting of two persons is necessary, nor it is necessary to prove the actual words of communication between the parties. So also in the case of **Mohd. Usman Mohd. Hussain Maniyar Vs. State of Maharashtra (1981) 2 SCC 443,** the Supreme Court has observed that in an offence under Section 120-B of I.P.C., the prosecution need not necessarily prove that the conspirators expressly

agreed to do and caused to be done the illegal act, the agreement may be proved by necessary implication. The same view has been taken by the Supreme Court in the case of **Ramnath Popli Vs. CBI (2003) 3 SCC 641.** In the present case, from the statement of Ejaz Ahmed and the other material on record, I find that there is sufficient material to show that the applicant had entered into a conspiracy with other accused to murder Advocate Lalit Jain. The learned A.P.P. has also pointed out that the statements of Ejaz Ahmed and Mohd. Mujammil have also been recorded under section 164 of Cr.P.C.

8. The learned advocate for the applicant has submitted that no reliance can be placed on the statement of Ejaz Ahmed as the said statement was recorded almost 14 months after the incident. He has submitted that this shows that it is false and concocted statement and hence, the said statement cannot be relied upon. As far as the aspect of delay in recording the statement is concerned, in my opinion, it is a matter which can be gone into only during the trial. Only after the evidence is led can it be said whether the delay is satisfactorily explained or not and whether the statement of Ejaz Ahmed can be relied upon or not.

9. Thereafter, the learned advocate for the

applicant has submitted that as far as the witness Ejaz Ahmed is concerned, he did not know the present applicant prior to the meeting in hotel Rolex. In such case, it was necessary for the prosecution to hold the identification parade wherein witness Ejaz was called upon to identify the applicant.

10. In respect of the contention that it was necessary to hold identification parade it needs to be emphasised that there is no proposition of law or of practice having universal application to all cases that it is imperative to hold test identification of an accused person who is not known to the witnesses prior to the identification and the absence to do so would vitiate the evidence of identification of the accused person by the witnesses, for the first time in the Court.

. In this connection, it will be useful to refer to some of the observations made by the Supreme Court in **(2004) 3 SCC 116 (Ashfaq Vs. State)** in the said case it has been observed that:

> "Though as a matter of general principle, the point urged with reference to the omission to conduct earlier to test identification parade may be correct, the question as to whether there is any violation of the same in a given case

> would very much depend on the facts and circumstances of each case and there cannot be any abstract general formula for universal and ready application in all cases."

. In the above case it is further stated that in the case of Ramanbhai Naranmbhai Patel it is observed as under:-

> "Two eye-witnesses in the said case were assaulted and seriously injured in broad daylight, they could have easily seen the faces of the assailants and their appearance and identity would well remain imprinted in their minds and the third witness who was said to have seen the fatal assault on her husband could also be easily considered to have got imprinted in her mind and faces of the accused and that,therefore, the omission to hold the test identification parade did not affect the credibility or truthfulness of their evidence".

. Thus, in such circumstances, it was observed in the case of Ashfaq that the accused were present in the house for quite some time holding the witnesses at ransom by directing and using threat to relieve them of the valuables on which they could lay their hands and it is too much to claim, in spite of all

this, that the evidence of PWs 2, 3 and 10 could not be either sufficient to properly identify the accused or relied upon against the accused in the absence of proper test identification parade.

11. In the present case witness Ejaz Ahmed was with the applicant in Hotel Rolex not just for a few seconds but for a considerable amount of time. Detailed conversation took place between Ejaz Ahmed, the applicant and the other persons who were present there. The said conversation was very significant in nature. In such case face of the applicant would be imprinted on the mind of the witness and he would not be likely to forget such a person. Thus, even though the applicant may have been a stranger and may not have seen him earlier, in view of the facts of this case, in my opinion, the absence of holding prior test identification parade would not necessarily be fatal.

12. Looking to the material gathered by the prosecution, I find that there is sufficient material to proceed in respect of the present applicant. Thus, I am of the opinion that this is not a fit case to discharge the applicant. Application is rejected.

13. It is made clear that the learned Sessions Judge shall not be influenced by any observations made in

this order while deciding the trial.

14. Office to issue an authenticated copy of this order to the parties.

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